

SEP 23 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-87
)	
RAYMOND W. CLANTON)	File No. BPH-911216MC
)	
LOREN F. SELZNICK)	File No. BPH-911216MD
)	
For Construction Permit)	
for a new FM Station on)	
Channel 279A in El Rio,)	
California)	

To: Administrative Law Judge
John M. Frysiak

PETITION TO ENLARGE ISSUES

Raymond W. Clanton, by his attorney, respectfully petitions to enlarge the issues against Loren F. Selznick in the above-captioned proceeding. In support thereof, the following is shown.

This Petition is based upon the documents exchanged on August 31, 1993, and the Petition for Leave to Amend, filed by Selznick on August 30, 1993. As it is filed within 15 days of such "newly discovered evidence", it is timely. Moreover, it raises matters of decisional significance and must be considered on its merits in any event.

Selznick's application stated that \$360,070 was needed to construct and operate her station for three months without revenue. To meet this cost, she averred that she had reasonable assurance of \$361,000 from Joseph P. Dailey. Dailey has no relationship to the applicant.

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On August 31, 1993, the applicants in this proceeding exchanged documents in accordance with the standard document production requirement, Section 1.325 of the rules. Among the document to be exchanged are "All bank letters and other financing documents with the dollar amounts unexpurgated." Selznick exchanged no financing documents whatsoever.

In Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301), 4 FCC Rcd 3853 (1989), the Commission indicated its concern over the number of broadcast applications filed by entities that were financially unqualified at the time of filing. It therefore strengthened its financial certification requirements; these new requirements apply to the applications in this proceeding. While "not requiring the applicant to submit underlying documentation to verify its cost estimate or funding sources", the Commission stated it is "now requiring that the applicant have such information and documentation on hand at the time it submits the application." (Emphasis in original.)

The Commission stated that one benefit of the new policy would be to deter filing by financially unqualified applicants seeking a settlement. It stated, "If an applicant must line up funding sources, identify them in detail and have underlying documentation in hand, it may be less likely to file an application merely to negotiate a settlement." (Emphasis supplied.)

The Commission went on to note that a benefit of requir-

ing the additional information permits the parties themselves "to make attempts to independently verify the (financial) certification, and move (post designation) to enlarge the issues at the hearing to include financial issues where indicated." The Commission stated that it will rely "to the extent possible, on the efforts of competing applicants to function as effective checks on the claims of other applicants."

Accordingly, it is clear that an applicant must have all underlying documentation in hand when it certifies its application. Selznick certified her application on December 13, 1991. She has produced no documentation relating to her financial proposal dated prior to that date.¹ She was clearly financially unqualified when she filed her application and an appropriate issue must be added. See also, Radio Lake Geneva Corp., 7 FCC Rcd 5586 (Rev. Bd. 1992). (Had the applicant been the winner, the Board would have remanded on a financial issue stemming from the fact that a written bank commitment had expired resulting in only an oral commitment for a period of time.)

In addition to the issue surrounding Selznick's financial

¹ In a Petition for Leave to Amend, filed August 30, 1993, Selznick included an August 27, 1993, Declaration of Mr. Dailey in which he asserts that he gave her "reasonable assurance that (he) would provide the funds necessary to construct and station and operate it for three months without revenue." He does not state the terms under which he was to provide the funds; the interest rate, repayment terms, and collateral to be required are unknown.

qualifications at the time of certification, there is also a need for a misrepresentation issue. Selznick affirmatively certified that she was financially qualified in her application. She is not a novice applicant. She is an attorney presently engaged in the active practice of law in New York City. She was represented by experienced communications counsel when she filed her application. See the transmittal letter from Peter Tannenwald, Exhibit 1 hereto. She also has experience in broadcasting, having worked for FM station WVBR, Ithaca, New York, including the position of President and General Manager. See Selznick's integration statement (Exhibit 3 to her application), Exhibit 2, hereto.

In Revision of Application, supra, the Commission stated that "any applicant who knowingly is not financially qualified but deliberately checks 'Yes' subjects itself to a potential misrepresentation as well as a financial issue at the hearing." Selznick is not a naive applicant. She was fully aware of the meaning of her response to the financial certification question on the application. Her "Yes" response was made deliberately. In accordance with the above policy, a misrepresentation issue and potential forfeiture against Selznick is also warranted.

Selznick remains financially unqualified to the present. She presented no modification to her financial proposal prior to August 30, 1993, when she filed a Petition for Leave to Amend. Therein she revised her total cost to construct and

operate her station for three months without revenue down to \$109,460. Clanton is opposing acceptance of her Petition on numerous grounds in a separate pleading. However, even considering her late-filed amendment, Selznick remains financially unqualified.

Selznick's amendment seeks to reduce her equipment budget to \$79,460. Her breakdown does not itemize such significant areas as studio equipment and furniture. The validity of the cost estimates of \$5,000 and \$10,000 respectively is not established.² Selznick's budget omits the cost to prepare the transmitter site and to remodel the studio. It is silent on legal and engineering fees. These are all part of the construction costs required by the Commission to be considered.

Selznick will incur additional expenses which have not been contemplated in her budget. She is committed to move to California, across the country from her current residence in New York. She has not provided for moving expenses, nor for living expenses at her new residence. As she will be operating the station for three months without revenue, it is unlikely she will be drawing a salary from the station whose total operating expenses are a slight \$10,000 per month. She

² Exhibit 3 hereto is a portion of a 1988 equipment quotation for studio equipment (control room and production studio) for a new FM station. As may be seen, the control room equipment was estimated at over \$17,000 and the production studio cost at nearly that amount. It is unlikely that prices have dropped dramatically in the interim.

expenses such as rent, food, clothing, transportation, etc., during this period. There can be no doubt that Selznick's budget is incomplete and inadequate.

Selznick states that she believes she can operate her station for \$10,000 per month, but does not show the basis for this figure; there is no itemization of anticipated operating expenses. She states that such figure came from her consultant, Mr. Miller, but it does not appear in his letter, Exhibit A to her August 30, 1993 Petition for Leave to Amend. Without more information, the Commission simply cannot accept her operating cost figure. Thus, both her revised construction cost estimate and operating cost estimate are unproven.

In addition to failing to justify her revised budget, Selznick has not demonstrated she has reasonable assurance of the funds to meet even her own estimate.

According to her own liquidity analysis, Exhibit C to her amendment, she has only \$111,019 available even upon liquidating her cooperative apartments. However, her analysis is flawed, for it does not take into account sales commissions and closing costs on the apartments' sale. Assuming a 6% sales commission on each sale, Selznick would have to pay \$12,000 in commissions alone should the apartments sell at their appraised total value of \$200,000. In addition, she has not figured in any capital gains taxes which would be payable from the sale of these properties, nor any closing expenses she might incur. It is clear that she does not personally

have even the claimed \$109,460 in net liquid assets. The sales commissions alone reduce her liquidity to under \$100,000.

Recognizing this deficiency in her own assets, Selznick claims to have assurance of a \$40,000 loan from Dailey. In his Declaration of August 27, 1993, Dailey describes the terms of his proposed loan to Selznick. He does not identify the collateral which will be required, however. Except in rare cases, not relevant here, the Commission requires loan letters to specify the collateral and insists that the applicant demonstrate it is able to provide it. Scioto, supra, and Peter Joseph Devlin and Patricia Eve Devlin, FCC 90M-2690, released August 27, 1990 (ALJ Frysiak), citing with approval A. P. Walter, Jr., 6 FCC 2d 875 (Rev. Bd. 1991). For these reasons, the Commission may not now credit Selznick with any funds from Dailey. The conclusion is beyond doubt; Selznick does not currently have financing to cover even her reduced cost estimate.

Information of the collateral to be required is vital for Selznick proposes to liquidate all of her investments and savings to put into the station. She will retain nothing of value to offer Dailey to secure his loan.

Selznick gives no information on Dailey other than his balance sheet. She fails to explain why he would be willing to make a loan to her. His Declaration does not describe any relationship between the two of them, nor does it indicate

that he has reviewed her financial statement and plans for the station. Selznick produced no documents under categories (I) (all documents relating to communications by and between principals of the applicant concerning the application...) and (L) (all documents that identify or describe the principals who are responsible for ... arranging financing...) of the Standardized Document Production Order. It must be concluded that there are no writings between Dailey and Selznick concerning her application other than his August 1993 Declaration.

The Commission requires that the lender either have a prior relationship with the borrower, or have reviewed the borrower's qualifications. Scioto, supra; Fox Television Stations, Inc., 8 FCC Rcd 2361 (Rev. Bd. 1993). As it stands at present, Dailey's letter is nothing more than a worthless accommodation.

The Commission may not credit Selznick with any funds from Dailey. Accordingly, she does not currently have financing to cover even her reduced cost estimate.

In sum, issues must be enlarged against Selznick because she lacks documents demonstrating reasonable assurance of financing when she filed her application, and does not have reasonable assurance at present. The following issues should be designated:


1. To determine whether Selznick falsely certified in her application that she was financially qualified, and if so, the effect thereon on her qualifications to become a Commission licensee.

2. To determine whether Selznick misrepresented facts or lacked candor in certifying that she was financially qualified in her original application, and if so, the effect thereon on her qualifications to become a Commission licensee.

3. To determine whether Selznick is financially qualified to construct her station and operate it for three months without revenue, and if not, the effect thereon on her qualifications to become a Commission licensee.

Respectfully submitted,

RAYMOND W. CLANTON

By 
Jerrold Miller
His Attorney

September 3, 1993

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

DISCOVERY REQUESTS

Should the issues be enlarged as requested, Clanton would seek to take the depositions of Ms. Selznick and Mr. Joseph P. Dailey. In addition, Clanton desires the following documents to be produced.

1. All documents in the possession or control of Selznick or her agents relating in any way to the estimated cost of construction and operation of her proposed El Rio FM station, whether before or after her application was filed.

2. All letters, writings, and other written materials sent by Selznick to Dailey, or received by Selznick from Dailey concerned in any respect with Selznick's FCC application, her financial statement, or her ability to operate a radio station.

3. All documents, including but not limited to income tax returns, which show an income tax refund receivable by Selznick.

4. All documents, including but not limited to wills and Court Orders, which show an inheritance receivable by Selznick.

5. All documents which show Selznick's current assets and liabilities, including but not limited to cash on hand and retirement accounts.

Arent Fox Kintner Plotkin & Kahn**COPY**

Peter Tannenwald
202/857-6024

December 16, 1991

Duplicate**VIA BERRY BEST COURIER**

Donna R. Searcy, Secretary
Federal Communications Commission
Mass Media Services
P. O. Box 358195
Pittsburgh, PA 15251-5195

Dear Ms. Searcy:

On behalf of Loren F. Selznick, submitted herewith in triplicate on Form 301 is an application for a construction permit for a new FM broadcast station to operate at El Rio, California.

Form 155 is attached, with the applicant's check no. 1429, in the amount of \$2,030.00, in payment of the required filing fee (Fee Code MTR).

Also enclosed is an additional copy of this letter, marked "Stamp and Return," which I request that you stamp as received and return to the courier.

If there are any questions about this application, please contact the undersigned.

Very truly yours,

Peter Tannenwald

Attachments

cc: (w/att) Ms. Loren F. Selznick

1050 Connecticut Avenue, NW
Washington, DC 20036-5339

Telephone: 202/857-6000
Cable: ARFOX
Telex: WU 892672
ITT 440266
Facsimile: 202/857-6395

8000 Towers Crescent Drive
Vienna, Virginia 22182-2733

7475 Wisconsin Avenue
Bethesda, Maryland 20814-3413

45 Rockefeller Plaza
New York, New York 10111

Arent/Fox Europe
Budapest, Hungary

Loren F. Selznick
Form 301
El Rio, California

EXHIBIT 3
Sec. IV-B

INTEGRATION OF OWNERSHIP AND MANAGEMENT

Loren F. Selznick will serve as full-time General Manager of the station and will work there at least 40 hours per week. She will supervise the entire operation of the facility, will make all major policy decisions, and will hire and fire station personnel.

If this application is granted, Ms. Selznick will move to California and will reside within the 1 mV/m contour of the station prior to commencement of operation under program test authority.

If this application is granted, prior to commencement of operation of the station under program test authority, Ms. Selznick will withdraw from her law practice in New York and will not undertake any other activity that will impair her ability to work at least 40 hours a week as General Manager of the station.

Ms. Selznick claims the following comparative credits:

1. Minority status - none
2. Diversification - no other media interests.
3. Integration of Ownership and Management - 100%
4. Ms. Selznick is a female.
5. Future local residence.
6. Broadcast experience at WVBR-FM, Ithaca, New York:

Disk jockey:	1980-1983
Training director:	1981-1982
Salesperson:	1982-1983
Newsperson:	1979, 1982-3
President and General Manager:	1982-1983

7. Auxiliary power is proposed to keep the station on the air in the event of a power failure.

Northeast Broadcast Lab, Inc.
PO Box 1179, 10373 Saratoga Rd.
S. Glens Falls, NY 12803

Date: 5-3-88 EXHIBIT 3 pg. 1
Quote No: NBL-050388-C1
Page: 3 of 8

To: Robert Short
Syracuse, NY

QUOTATION

ITEM	QTY.	MODEL NO.	DESCRIPTION	UNIT PRICE	TOTAL PRICE
<u>MONITORING AND PROCESSING</u> <u>EQUIPMENT - (BUDGETARY ONLY)</u>					
Q	1	8100A/1	Orban fm Optimod stereo generator audio processor		4995.00
R	1	FMM-2	Belar modulation monitor		1450.00
S	1	FMS-2	Belar stereo monitor		1650.00
T	1	RFA-1	Belar rf amplifier		575.00
U	1	MJ-10	Belar yagi antenna		95.00
V	1	CEB	Gorman-Redlich ebs encoder/decoder (external receiver required)		475.00
					9240.00
<u>STL AND REMOTE CONTROL -</u> <u>(BUDGETARY ONLY)</u>					
W	1	PCL-6020	Moseley composite stl system		7200.00
X	2	PR-450U	Scala Paraflector antennas	550.00	1100.00
Y	300'	FLC-12-50J	Cablewave 1/2" foam transmission line	1.79	537.00
Z	2	KTL6A	Moseley/Cablewave connector and jumper cable kits	150.00	300.00
AA	4	713737-002	Cablewave ground kits	16.50	66.00
AB	2	915153	Cablewave tie wraps (50 pcs)	30.30	60.60
AC	1	TC-8	Advanced Microdynamics 8-channel remote control system		2495.00
					11758.60
<u>CONTROL ROOM - (BUDGETARY ONLY)</u>					
AD	1	2000SC-12S	Arrakis 12-channel stereo console		4695.00
AE	2	SL1200MKII	Technics turntables, tone arms, bases, dust covers	525.00	1050.00
AF	2	681A	Stanton phono cartridges	55.00	110.00
AG	2	P100S	ATI stereo phono preamplifiers	269.00	538.00
AH	1	UTC	Henry Engineering turntable controller		195.00
AI	1	LM1C	Luxo microphone boom w/mount		48.45
AJ	1	RE-10	Electro-Voice microphone		197.00
AK	1	314	windscreen for above		19.00
AL	2	Sentry 100A	Electro-Voice monitor speakers	265.00	530.00
AM	1	HD-410SL	Sennheiser headphones		69.00
AN	2	2100CPS	Broadcast Electronics stereo cart players	1525.00	3050.00
AO	1	CD-501	Tascam compact disc player		1249.00
AP	1	MR1B	Nakamichi cassette deck		995.00
AQ	1	MX5050BII	Otari tape recorder		2995.00
AR	1	340	Fidelipac on-air light		55.00
AS	1	BSC100A	100 cart wall-rack		81.00

Northeast Broadcast Lab, Inc.
PO Box 1179, 10373 Saratoga Rd.
S. Glens Falls, NY 12803

Date: 5-3-88 EXHIBIT 3 pg. 2
Quote No: NBL-050388-C1
Page: 4 of 8

To: Robert Short
Syracuse, NY

QUOTATION

ITEM	QTY.	MODEL NO.	DESCRIPTION	UNIT PRICE	TOTAL PRICE
<u>CONTROL ROOM - (CONT)</u>					
AT	1	SPH3A	Gentner telephone interface		559.00
AU	1		Gentner studio timer		159.00
AV	1	BECL-100	rotary, quartz clock		45.00
AW	1	PPS3-14MKII NS	ADC pre-wired patch panel		595.00
					17234.45
<u>PRODUCTION STUDIO - (BUDGETARY ONLY)</u>					
AX	1	1500SC-8S	Arrakis 8-channel stereo console		3999.00
AY	2	SL1200MKII	Technics turntables, tone arms, bases, dust covers	525.00	1050.00
AZ	2	681A	Stanton phono cartridges	55.00	110.00
BA	2	P100S	ATI stereo phono preamplifiers	269.00	538.00
BB	1	UTC	Henry Engineering turntable controller		195.00
BC	1	LM1C	Luxo microphone boom w/mount		48.45
BD	1	RE-10	Electro-Voice microphone		197.00
BE	1	314	windscreen for above		19.00
BF	2	Sentry 100A	Electro-Voice monitor speakers	265.00	530.00
BG	1	HD-410SL	Sennheiser headphones		69.00
BH	1	2100CPS	Broadcast Electronics stereo cart player		1525.00
BI	1	2100CRPS	Broadcast Electronics stereo cart recorder		2395.00
BJ	1	CD-501	Tascam compact disc player		1249.00
BK	1	MR1B	Nakamichi cassette deck		995.00
BL	1	MX5050BII	Otari tape recorder		2995.00
BM	1	340REC	Fidelipac recording light		55.00
BN	1	BSC100A	100 cart wall-rack		81.00
BO	1		Gentner studio timer		159.00
BP	1	BECL-100	rotary, quart clock		45.00
BQ	72	A-2	Audiopak 40 second cartridges	3.15	226.80
BR	72	A-2	Audiopak 70 second cartridges	3.15	226.80
BS	12	806-1200	Scotch recording tape	10.74	107.40
BT	1	400	Fidelipac tape eraser		120.00
					16935.45

CERTIFICATE OF SERVICE

I hereby certify that on this 3 day of September, 1993
a copy of the foregoing document was placed in the United States mail,
first class postage prepaid, addressed to the following:

Paulette Laden, Esq.
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, NW, Suite 7212
Washington, DC 20554

Robert L. Thompson, Esq.
Pepper & Corazzini
1776 K Street, NW, Suite 200
Washington, DC 20006

Robin W. Zuer